

February 4, 2015

William H. Hyatt, Jr.
973.848.4045
F: 973.848.4001
william.hyatt@klgates.com

Via Electronic (hq.foia@epa.gov) and Regular Mail

National Freedom of Information Officer
U.S. Environmental Protection Agency
FOIA and Privacy Branch
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

Re: Lower Passaic River Study Area
Freedom of Information Act Appeal: EPA-R2-2014-06018

Dear Sir/Madam:

Our firm represents the Cooperating Parties Group ("CPG") with respect to the Lower Passaic River Study Area ("LPRSA"). I am writing to appeal Freedom of Information Act Request ("FOIA Request") EPA-R2-2014-06018 submitted to the United States Environmental Protection Agency ("EPA") Region 2 on April 28, 2014, in relation to EPA's Proposed Plan for the lower eight miles of the LPRSA ("Proposed Plan"). A copy of the FOIA Request is enclosed.

The FOIA Request requested the following:

[A]ny and all emails, correspondence, and other documents relating to: (1) EPA's 2008 Conceptual Site Model ("CSM") and Empirical Mass Balance Model ("EMBM") developed as part of the LPRSA lower 8 mile Focused Feasibility Study ("FFS") and any comments, revisions or changes to the CSM that were considered by EPA in the development and issuance of the Proposed Plan for the lower 8 miles of the LPRSA; and (2) EPA's June 2008 peer review of the CSM and EMBM.

EPA provided interim releases of information related to this FOIA Request on or around May 27, 2014 and November 25, 2014. EPA sent a letter to the CPG dated January 5, 2015, which provides that all responsive information to this request has been released. Although EPA provided the June 2008 peer review of the CSM and EMBM responsive to part (2) of the FOIA Request, the CPG does not believe that EPA has adequately and fully responded to part (1) of the request, and, therefore, submits this appeal with regard to this part.

Specifically, EPA has failed to provide the 2008 CSM and EMBM developed as part of the FFS and Proposed Plan, or to provide comments, revisions or changes to the CSM that were considered by EPA in the development and issuance of the Proposed Plan. Such information is critical for the CPG and the public to understand the basis for the Proposed Plan and the development of EPA's CSM from the time of EPA's initial release of the draft FFS in 2007 through its release of the revised FFS and Proposed Plan in April 2014. It is also critical for the CPG to review and understand EPA's position with respect to these

K&L GATES

Headquarters Freedom of Information Staff

February 4, 2015


Page 2

matters as the CPG works to complete the remedial investigation/feasibility study ("RI/FS") of the full 17-mile LPRSA pursuant to the May 2007 Administrative Agreement and Order on Consent for Remedial Investigation/Feasibility Study – CERCLA Docket No. 02-2007-2009. Instead, EPA provided limited and largely non-substantive correspondence, including materials that were submitted by the CPG to EPA.

Further, EPA withheld responsive information to this FOIA Request as outlined in a 15-page withholding log. The withholding log includes the following categories: quantity/type of document; email from/generated by; email to/recipient of; sent month-year; subject of documents; and exemption status. Each of the documents was withheld on the basis of Exemption 5 of FOIA. However, the CPG believes that the type of information requested would not be generally protected in civil discovery. See *Burka v. U.S. Dep't of Health and Human Services*, 87 F.3d 508 (D.C. Cir. 1996). Based on the limited information provided in the withholding log, it appears that many of the documents withheld are directly responsive to the FOIA Request. For example, there are 63 emails and documents created in 2010 related to, among other things, the "FFS CSM" and "Integration of CPG data into CSM." There are also 19 emails and documents created in 2011 related to, among other things, the "Draft CSM" and "EMB and Numerical Model." Further, it is difficult to ascertain the quantity and type of documents withheld as they are grouped into broad categories with limited descriptions. For example, there are 86 emails and documents transmitted in 2008 related to, among other things, the EMB comments; CSTAG memo edits, Passaic modeling, resuspension evaluation, and CSM peer review members. Other categories are grouped in as high as over 200 emails and documents. In addition, there was correspondence labeled as exempt under attorney-client communications, but that was not sent among attorneys. Thus, the CPG does not believe that EPA has met its burden to justify its decision to withhold the documents.

As the CPG has advised Region 2, most, if not all, of the outstanding requested documents should have been considered by EPA as part of its supporting analysis in preparation of the Proposed Plan and FFS. Therefore, this information should have been part of the administrative record. However, because it was not part of the administrative record, the CPG and other members of the public were not able to adequately comment on all aspects of the Proposed Plan and FFS by the August 20, 2014 deadline. Further, since such information has still not been provided, the CPG and the public remain unable to fully understand the basis for the Proposed Plan.

Very truly yours,



William H. Hyatt, Jr.

Enclosures

cc: Sarah P. Flanagan, Esq., EPA Region 2, Assistant Regional Counsel (via electronic mail)

Request Details**Tracking Number :** EPA-R2-2014-006018

	Submitted	Evaluation	Assignment	Processing
Request Information				
Full Name : Robert Paul La	Closed	04/28/2014	Date Submitted :	
Gravenis			Closed Date :	
Organization : K&L Gates		01/07/2015		
LLP		Partial grant/partial denial	Final Disposition :	

Description :

United States Environmental Protection Agency
 Region 2
 Freedom of Information Officer
 U.S. EPA Region 2
 290 Broadway, 26th Floor
 New York, NY 10007-1866
 Re: Lower Passaic River Study Area Superfund Site

To Whom It May Concern:

I am submitting this document request pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 et seq. This request concerns the United States Environmental Protection Agency's ("EPA") files relating to the Diamond Alkali Superfund Site (the "Site") which includes the former pesticides manufacturing plant and surrounding properties at 80 and 120 Lister Avenue in Newark, New Jersey, the Lower Passaic River Study Area ("LPRSA") and the Newark Bay Study Area. The EPA Site ID number is NJD980528996.

Specifically, I request copies of any and all emails, correspondence, and other documents relating to: (1) EPA's 2008 Conceptual Site Model ("CSM") and Empirical Mass Balance Model ("EMBM") developed as part of the LPRSA lower 8 mile Focused Feasibility Study ("FFS") and any comments, revisions or changes to the CSM that were considered by EPA in the development and issuance of the Proposed Plan for the lower 8 miles of the LPRSA;

and (2) EPA's June 2008 peer review of the CSM and EMBM.

I would ask that you contact me at your earliest convenience to discuss arrangements for providing the requested documents. This firm will assume financial responsibility for any necessary copying and/or shipping charges. Your prompt attention to this matter is greatly appreciated. Thank you for your anticipated cooperation.

Sincerely,

Robert Paul La Gravenis

Senior Paralegal
K&L Gates LLP
One Newark Center, 11th Floor
Newark, NJ 07102
robertpaul.lagravenis@klgates.com

Released Records

To ensure successful downloading, multiple record download is limited to a collection of records that is 20 MB or less. Please limit your selection to 20 MB before attempting to download. Large records can be downloaded individually.



Filter by Title :

SUBMIT

CLEAR



Results 50 

694 records found, displaying 1 to 50.

1 2 3 4 5  

Download	Title	Type	Size (MB)	Release Date	Released With
----------	-------	------	-----------	--------------	---------------

694 records found, displaying 1 to 50.

1 2 3 4 5  

La Gravenis, Robert Paul

From: calderon.wanda@epa.gov
Sent: Monday, April 28, 2014 3:55 PM
To: La Gravenis, Robert Paul
Subject: FOIA Request EPA-R2-2014-006018 Submitted

This message is to confirm your request submission to the FOIAonline application: [View Request](#). Request information is as follows:

- Tracking Number: EPA-R2-2014-006018
- Requester Name: Robert Paul La Gravenis
- Date Submitted: Mon Apr 28 15:54:25 EDT 2014
- Request Status: Submitted
- Description: United States Environmental Protection Agency
Region 2
Freedom of Information Officer
U.S. EPA Region 2
290 Broadway, 26th Floor
New York, NY 10007-1866
Re: Lower Passaic River Study Area Superfund Site

To Whom It May Concern:

I am submitting this document request pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 et seq. This request concerns the United States Environmental Protection Agency's ("EPA") files relating to the Diamond Alkali Superfund Site (the "Site") which includes the former pesticides manufacturing plant and surrounding properties at 80 and 120 Lister Avenue in Newark, New Jersey, the Lower Passaic River Study Area ("LPRSA") and the Newark Bay Study Area. The EPA Site ID number is NJD980528996.

Specifically, I request copies of any and all emails, correspondence, and other documents relating to: (1) EPA's 2008 Conceptual Site Model ("CSM") and Empirical Mass Balance Model ("EMBM") developed as part of the LPRSA lower 8 mile Focused Feasibility Study ("FFS") and any comments, revisions or changes to the CSM that were considered by EPA in the development and issuance of the Proposed Plan for the lower 8 miles of the LPRSA; and (2) EPA's June 2008 peer review of the CSM and EMBM.

I would ask that you contact me at your earliest convenience to discuss arrangements for providing the requested documents. This firm will assume financial responsibility for any necessary copying and/or shipping charges. Your prompt attention to this matter is greatly appreciated. Thank you for your anticipated cooperation.

Sincerely,

Robert Paul La Gravenis

Senior Paralegal
K&L Gates LLP
One Newark Center, 11th Floor

Newark, NJ 07102

robertpaul.lagravenis@klgates.com